

PUBLIC MEETING MINUTES

October 8, 2009

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Acting Chair Dowdin Calvillo called the meeting to order at 10:00 a.m.

Members Present

Alice Dowdin Calvillo, Acting Chair
Sally M. McKeag, Member
Karen L. Neuwald, Member
Robin W. Wesley, Member

Staff Present

Tami Bogert, General Counsel
Les Chisholm, Division Chief, Office of the General Counsel
Bernard McMonigle, Chief Administrative Law Judge

Call to Order

After establishing that a quorum had been reached for the purposes of today's public meeting, Acting Chair Dowdin Calvillo called the Board to order for a return to the open session of the August 13, 2009 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Acting Chair Dowdin Calvillo read into the record the decisions that issued since the open session in August. Those were PERB Decision Nos. 2055-M, 2056-M, 2057, 2058-M, 2059, 2060-S, 2061, 2062-S, 2063, 2064-M, 2065-M, 2066-M, 2067-M, 2068 and 2069-H, and Administrative Appeal No. Ad-381. In request for injunctive relief (I.R.) No. 573 (*Travis Unified Teachers Association v. Travis Unified School District*), the request was denied; I.R. No. 574 (*Teamsters Local 856 v. County of Alameda*), the request was denied; I.R. No. 575 (*Oceanside Firefighters Association, IAFF Local 3736 v. City of Oceanside*), the request was denied; I.R. No. 576 (*City of Palo Alto v. SEIU Local 521*), the request was granted; and in I.R. No. 577 (*Government Lawyers Association of Workers v. County of Tulare*), the request was denied. A document containing a listing of the aforementioned decisions was made available at the meeting.

Acting Chair Dowdin Calvillo adjourned the August 13, 2009 public meeting. She then opened and called to order the October 8, 2009 public meeting. Member Wesley led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Wesley and seconded by Member Neuwald that the Board adopt the minutes for the August 13, 2009 public meeting.

Ayes: Dowdin Calvillo, McKeag, Neuwald, and Wesley.

Motion Adopted – 4 to 0.

Comments From Public Participants

None.

Staff Reports

The following staff reports were received at today's meeting with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

a. Administrative Report

Chief Administrative Officer Eileen Potter was excused from today's meeting. Acting Chair Dowdin Calvillo stated that, at this time, there was nothing to report and that matters regarding PERB's budget were status quo.

b. Legal Report

General Counsel Tami Bogert reported that the monthly activity and litigation reports had been distributed to the Board. She highlighted several items in those reports, specifically since the Board's last public meeting in August. With regard to monthly activities, during the months of August and September, 162 new cases were filed with PERB, 113 case investigations were completed, and staff conducted 41 informal settlement conferences. She reported that during that same two month period, as noted by Acting Chair Dowdin Calvillo, five requests for injunctive relief were filed with PERB. Those requests were considered by the Board and completed as follows: four were denied and one was granted.

Ms. Bogert continued that the sole litigation matter on which to report today was the resulting court case from the granted request for injunctive relief. That case, *PERB v. SEIU Local 521*, is in the Santa Clara County Superior Court where a temporary restraining order was sought by PERB and granted by the court to enjoin certain identified essential employees of the City of Palo Alto from striking. The temporary restraining order will stand until a court hearing is held to determine whether to continue the injunction or dissolve the existing order. The court hearing is scheduled for Tuesday of next week.

Member Neuwald wanted to know if there was an unfair practice charge filed at PERB in association with the granted request for injunctive relief. Ms. Bogert responded that, as required in cases where injunctive relief is sought from PERB, an unfair practice charge was indeed filed in this matter and is pending staff review.

Chief Administrative Law Judge McMonigle reported on the activities of the Division of Administrative Law and stated that a report had been distributed to the Board. In summarizing that report he stated that in September, 14 cases had been assigned for formal hearing to the Division's six administrative law judges. Mr. McMonigle reported that there are currently 61 cases set for formal hearing, and the dates for formal hearing are being scheduled in January and February. In the Division, 25 cases have been submitted for proposed decision writing. Four proposed decisions were issued in September, and taking a look at the Division's schedule, Mr. McMonigle reported that there would be a minimum of eight proposed decisions issued in October. In conclusion, Mr. McMonigle stated that also in September, there were 15 days of formal hearing held and six formal hearings completed.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported on legislation that affect matters within PERB's jurisdiction or are of interest. Mr. Chisholm reported on the only pending legislation that would alter PERB's jurisdiction, Senate Bill 656 (DeSaulnier). SB 656 would modify the MMBA by removing from PERB jurisdiction bargaining units that include by a majority, peace officers as defined under Penal Code section 830.1. SB 656 has been enrolled and PERB is currently waiting to see what action, if any, the Governor takes on this bill.

Acting Chair Dowdin Calvillo, noting that as a neutral body PERB does not take a position on legislation, asked if there was information from any source about what action the Governor might take on this bill and inquired about the impending deadline for the Governor to take such action. Mr. Chisholm responded that he had not heard any information in this regard and that the last date for the Governor to take action on this bill is October 11.

Member Wesley wanted confirmation that SB 656 was the only pending legislation that directly affects PERB's jurisdiction; to which Mr. Chisholm responded that was correct.

Member Neuwald inquired about SB 656 or any other legislation enacted this year that would have implementation requirements by PERB.

Mr. Chisholm responded that SB 656, although it may require some review as charges are filed to determine whether a bargaining unit is excluded from PERB jurisdiction, will not have any implementation impact or require any regulatory changes.

Member Neuwald also wanted to know if there might be any resultant impact from prior charges filed and under investigation at PERB such as was seen from the litigation regarding Senate Bill 1296 (Corbett).

Ms. Bogert first clarified that the referenced litigation was not over the bill (SB 1296) itself. She then went on to say that if SB 656 becomes law, there would be careful review from the General Counsel's Office on the front end when unfair practice charges are processed to ensure the new law is applied as appropriate.

Motion: Motion by Member McKeag and seconded by Member Neuwald that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be received.

Ayes: Dowdin Calvillo, McKeag, Neuwald, and Wesley.

Motion Adopted – 4 to 0.

Old Business

None.

New Business

None.

General Discussion

Acting Chair Dowdin Calvillo announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through December 10, 2009, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Motion: Motion by Member Wesley and seconded by Member McKeag to recess the meeting to continuous closed session.

Ayes: Dowdin Calvillo, McKeag, Neuwald, and Wesley.

Motion Adopted – 4 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Alice Dowdin Calvillo, Acting Chair